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April 30, 2020
VIA ECF

Writer's Direct
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Hon. Analisa Torres
United States District Judge

Re: *Andrew Yang et. al. v. New York Board of Elections*, 20 cv 3325 (AT)

Dear Judge Torres,

This letter is to request leave to amend our complaint under Federal Rules of Civil Procedure 15 and your rules of Court. This morning we filed our First Amended Complaint as of right under FRCP 15 under time pressure from the truncated briefing schedule requested by Defendant to submit our memo of law this evening by midnight (ECF Dkt No. 4) that was granted by your honor (ECF Dkt. No 5). We did not have time to request leave to file a corrected Complaint to fix inartful pleadings made in our efforts to protect the voting rights of over six million New York voters.

In light of our review of Constitutional law, specifically as it applies to the 11th Amendment, we deem it most prudent (although not necessarily dispositive) to add Commissioners Douglas Kellner and Andrew Spano of the New York Board of Elections individually as defendants to this present action. This is primarily due to the *Ex Parte Young* doctrine (see *Ex Parte Edward T. Young, Petitioner*, 209 U.S. 123 (1908)) that allows Federal actions against the State via lawsuits against their officers/agents such as Kellner and Spano.

We are working diligently to finish our memo of law by midnight this evening. We believe we could file a Second Amended Complaint by midnight tomorrow, May 1, which would not prejudice the Defendant in this present action as except for Mr. Kellners letter (ECF Dkt. No. 4), Defendant has yet to appear. Allowing us to amend is in the interest of justice as it would most easily permit this case to continue in this Court in the interest of justice and economy, rather than forcing our clients, who are doing this action *non sibi*, to purchase an additional index number and incur additional costs. If Plaintiffs are successful in this action, and the requested is not granted, it would actually harm Defendants as the June 23 primary is coming up quick.

Reference is also made to your honor's rules, particularly III.B.ii, in that Plaintiffs are within the five-day period to respond to Mr. Kellner's letter dated April 29, 2020 (ECF Dkt. No. 4). Defendant has not yet filed a motion to dismiss, but it seems probable that they could.

In light thereof, please consider issuing the following proposed order:
Plaintiffs have until midnight, Friday May 1, to amend their First Amended Complaint to add additional defendants to the action and file it as the Second Amended Complaint. Plaintiffs may serve additional contemplated Defendants Douglas Kellner and Andrew Spano by reliable electronic means.

Thank you for your consideration and service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Kurzon', is positioned above the typed name.

Jeffrey M. Kurzon, Esq.
Bar No. JM3388